

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, N.E., Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

CARLA C. JOHNSON,
Tenant/Petitioner

v.

PENROSE MANAGEMENT CO.,
Housing Provider/Respondent

Case No.: RH-TP-07-29047
In Re 1375 Fairmont St., N.W., Unit 609

**ORDER DISMISSING CERTAIN OF TENANT'S CLAIMS
AND SCHEDULING HEARING**

I. Introduction

On August 20, 2007, Tenant/Petitioner Carla C. Johnson filed tenant petition ("TP") 29,047 against Housing Provider/Respondent Penrose Management Co. alleging violations of the Rental Housing Act of 1985 at Tenant's Housing Accommodation at 1375 Fairmont Street N.W., Unit 609. The petition alleged that: (1) a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (2) the building in which the rental unit is located is not properly registered with the Rental Accommodations and Conversion Division ("RACD");¹ and (3) retaliatory action had been directed against Tenant by

¹ On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs were transferred to the Department of Housing and Community Development ("DCHD"). The RACD functions were assumed by the Rental Accommodations Division of DCHD. The transfer does not affect any of the issues in this case.

Housing Provider for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act.

On November 9, 2007, Housing Provider filed a Motion for Dismissal of All Claims Except for Retaliation. Housing Provider asserted that: (1) the Housing Accommodation was exempt from the rent stabilization provisions of the Rental Housing Act under D.C. Official Code § 42-3502.05(a)(4) on account of having been vacant in January 1985; and (2) Tenant's claim that the property was not properly registered had previously been litigated in a prior tenant petition, TP 28,432, and was barred as *res judicata* as a result of Tenant's agreement to dismiss that petition with prejudice. Tenant opposed the motion to dismiss.

This administrative court scheduled a hearing on Tenant's claims on January 8, 2008. Both parties were represented by counsel at the hearing. The parties agreed to present evidence and argument on Housing Provider's motion to dismiss, reserving the issues not subject to the motion for a future hearing. The parties submitted exhibits in support of and in opposition to the motion to dismiss. Housing Provider's property manager, Tina Wilson, gave testimony in support of the motion. Following the hearing Tenant submitted a written Supplemental Argument.

Based on the exhibits in evidence, the testimony of Ms. Wilson, and the entire record in this case, I now make the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

The Housing Accommodation here is a 90 unit apartment building on the corner of 14th Street and Fairmont Avenue N.W. The building was vacant in January 1985. Following that date the building was renovated and leased to tenants. On August 3, 2004, the building owners

filed a Registration/Claim of Exemption Form with the Rent Administrator, claiming an exemption under Section 205(a)(4) of the Rental Housing Act, D.C. Official Code § 42-3502.05(a)(4), on account of the building having been “continuously vacant and not subject to rental agreements since January 1, 1985.” Respondent's Exhibit ("RX") A.²

Because the Housing Accommodation was on the corner of 14th Street and Fairmont Avenue, it had two addresses. The Registration/Claim of Exemption Form filed in August 2004 listed the billing address for the building as 1375 Fairmont Avenue N.W. but described the “Address of Premises Applied for” as 2701 14th St. N.W.” On November 29, 2005, Housing Provider filed an Amended Registration Form with the Rent Administrator listing the address of the property as 1375 Fairmont Street N.W., and cross-referencing the previous registration. RX A. This information was not reflected in the District of Columbia Real Property Assessment Database, which gave no listing for any property at 1375 Fairmont Street N.W. and listed an incorrect owner for 2701 14th Street, N.W. Petitioner's Exhibit ("PX") 100, 101.

On September 28, 2005, Tenant filed TP 28,432 with the Rent Administrator complaining of violations of the Rental Housing Act at the Housing Accommodation. One of the complaints cited in the tenant petition was that: “The building in which my/our rental unit(s) is located is not properly registered with the Rental Accommodations and Conversion Division.” RX B. On November 29, 2005, Tenant and Housing Provider filed a Praecipe with the RACD, signed by Tenant, requesting the Rent Administrator to “dismiss this matter as settled, with prejudice.” RX C.

² Respondent’s counsel argued that a previous Registration/Claim of Exemption Form had been filed in 1987, but there was no evidence in the record on this point. Respondent’s property manager, Tina Wilson, testified that she had been working in the building since 1989.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings (“OAH”) has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

The rent control provisions of the Rental Housing Act apply to “each rental unit in the District,” subject to exceptions that are specified in the Act itself. D.C. Official Code § 42-3502.05(a). The exception at issue here is D.C. Official Code § 42-3502.05(a)(4), which excepts: “Any housing accommodation which has been continuously vacant and not subject to a rental agreement since January 1, 1985 . . . provided that upon rerental the housing accommodation is in substantial compliance with the housing regulations when offered for rent.”

Here Ms. Wilson’s uncontroverted testimony established that the Housing Accommodation was vacant on January 1, 1985. Moreover, Tenant conceded in her Supplemental Argument that she “found information that tends to support the property was vacate [sic] in 1985.” Although the tenant petition asserts that a rent increase was taken when the Housing Accommodation was not in substantial compliance with the Housing Regulations, tenant offered no evidence that the building was not in substantial compliance with the regulations when it was initially offered for rent. In any event, Tenant is barred from challenging any rent increase based on the condition of the building if the increase was implemented more than three years before the tenant petition was filed. *Kennedy v. D.C. Rental Hous. Comm’n*, 703

A.2d 94, 97 (D.C. 1998) (holding that the Rental Housing Act's statute of limitations, D.C. Official Code § 42-3502.06(e) "bars any investigation of the validity of . . . adjustment in either the rent levels or rent ceiling, in place more than three years prior to the date of the filing of the tenant petition.")

The Rental Housing Act does not require a housing provider to file a claim of exemption in order to qualify for the exemption for housing that was vacant in January 1985. D.C. Official Code § 42-3502.05(a)(4). By contrast, the Act requires that a housing provider file a claim of exemption form as a precondition to obtain an exemption as a small landlord under D.C. Official Code § 42-3502.05(a)(3)(C). The omission of the requirement to file a claim for units vacant in January 1985 would seem to indicate that it is not required under the statute. Moreover, the Rental Housing Regulations direct that a housing accommodation "shall be exempt under § 205(a)(4) of the Act" if it "was continuously vacant and not subject to a rental agreement for the period beginning on January 1, 1985, and continuing at least until the effective date of the Act." 14 DCMR 4106.14.

The specific language of 14 DCMR 4106.14 would seem to preempt the requirement in another of the regulations, 14 DCMR 4106.1., which provides that: "Each housing provider who claims a rental unit is exempt from the Rent Stabilization Program of the Act shall file a Registration/Claim of Exemption form with the Rent Administrator." Failure to file the form "may result in the denial of the claim of exemption and/or the imposition of other penalties and sanctions." 14 DCMR 4106.2. Notwithstanding, the Rental Housing Commission has interpreted these regulations to require that a housing provider file a claim of exemption form in order to secure an exemption under D.C. Official Code § 42-3502.05(a)(4) for a building that

was vacant in January 1985. *Hammer v. Manor Mgmt. Corp.*, TP 28,006 (RHC May 17, 2006) at 11-13.

Fortunately, it is unnecessary for me to decide whether the Commission's decision in *Hammer* runs contrary to the plain language of the Rental Housing Act and the Commission's own regulations. It is undisputed that Housing Provider filed a Registration/Claim of Exemption Form in August 2004. RX A. Although the form identified the premises as 2701 14th Street N.W., rather than 1375 Fairmont Street N.W., it is clear that the form applied to the Housing Accommodation here and would be effective, even if Housing Provider had not clarified the ambiguity by filing the Amended Registration Form in November 2005. RX A.

The statutory exemption only applies to the rent stabilization provisions of the Rental Housing Act, Sections 42-3502.05(f) through 42-3502.19, except Section 42-3502.17. *See* D.C. Official Code § 42-3502.05(a). Tenant's claim that a rent increase was taken while the unit was not in substantial compliance with the housing regulations, D.C. Official Code § 42-3502.08(a)(1)(A) and her claim that the building was not properly registered, D.C. Official Code § 42-3502.08(a)(1)(B) are therefore subject to the exemption. However, Tenant's claim for retaliation, D.C. Official Code § 42-3505.02, is not subject to the exemption. Therefore I will dismiss the claims in the tenant petition that are barred on account of Housing Provider's statutory exemption and will schedule a hearing to determine the claim for retaliation that is not barred.

Because I find that the Housing Accommodation was exempt and not required to be registered, I will not reach the issue of whether Tenant's claims would also have been barred

under principles of *res judicata* or collateral estoppel on account of the dismissal of the earlier tenant petition.

IV. Order

Accordingly, it is this **28th** day of **March 2008**,

ORDERED, that Housing Provider's Motion for Dismissal of All Claims Except for Retaliation is **GRANTED**; and it is further

ORDERED, that Tenant's claims that a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations and that the building in which the rental unit is located is not properly registered are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the tenant and the housing provider must appear for a hearing on **May 13, 2008**, at **9:30 a.m.**, at the Office of Administrative Hearings, 941 North Capitol Street, N.E., Suite 9100 (9th Floor), Washington, DC; and it is further

ORDERED, that all other provisions of the Case Management Order issued on October 25, 2007, shall remain in effect.

/s/
Nicholas H. Cobbs
Administrative Law Judge